



Paper No. 6

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
Anthony Toivonen :
Application No. 09/430,691 :
Filed: October 29, 1999 :
Title: Distributed Component System Management :
Attorney Docket No. 10559/043001 :

**DECISION REFUSING STATUS
UNDER 37 C.F.R. §1.47(b)**

This is in response to the petition under 37 C.F.R. 1.47(b), filed March 13, 2000.

The petition under 37 C.F.R. 1.47(b) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on October 29, 1999, without an executed oath or declaration or payment of filing and claim fees and naming Anthony Toivonen, as sole inventor.

Accordingly, on November 30, 1999, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, a surcharge for late filing, and payment of the filing and claim fees. This Notice set a period for reply of two months from the mailing date of the notice, to January 30, 2000. On February 29, 2000, (certificate of mailing date), petitioner requested and obtained a one-month extension of time under the provisions of 37 C.F.R. §1.136(a). At the same time, petitioner paid the surcharge, filing and claim fees, and submitted the instant petition (with petition fee) and thereby, avoided abandonment of the application.

Rule 47 applicant maintains that status under 37 C.F.R. §1.47(b) is proper because the sole inventor, Anthony Toivonen, cannot be found or reached after diligent effort and irreparable damage by way of loss of proprietary rights would result if the application is not accepted at this time.

A grantable petition under 37 C.F.R. §1.47(b) requires:

(1) an acceptable oath or declaration in compliance with 37 C.F.R. §1.63 and 1.64 or 1.175;

(2) the rule 47 applicant must state his or her relationship to the inventor as required by 37 C.F.R. §1.64;

(3) proof that the non-signing inventor cannot be found or reached after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

- (4) the petition fee;
- (5) a statement of the last known address of the non-signing inventor;
- (6) that rule 47 applicant make out a *prima facie* case (i) that the invention has been assigned to him or her or (ii) that the inventor has agreed in writing to assign the invention to him or her or (iii) otherwise demonstrate a proprietary interest in the subject matter of the invention; and
- (7) rule 47 applicant must prove that the filing of the application is necessary (i) to preserve the rights of the parties or (ii) to prevent irreparable damage. See MPEP §409.03(g).

See 35 U.S.C. §118; 37 C.F.R. §1.47; §§409.03 and 605 of the *Manual of Patent Examining Procedure* (7th ed. 1998)(Rev. 1, Feb. 2000)(MPEP).

The instant petition lacks requirements (1), (2), (3), (6) and (7):

- The declaration, submitted with the instant petition is not acceptable. The declaration must state the full name, residence, citizenship and post office address of all inventors, regardless of signing status. The declaration must be executed in accordance with §1.66 or §1.68.
- The statement of relationship required under 37 C.F.R. §1.64 is not included. To be in compliance with §1.64, the rule 47(b) applicant must make the required oath or declaration. The declaration must state the relationship of the person, making the oath or declaration, to the inventor, and upon information and belief, the facts which the inventor is required to state.
Where a corporation is the 47(b) applicant, an officer thereof should normally sign the necessary oath or declaration. Regardless, the title or position of the person signing must be stated. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP 324. See MPEP 409.03(b).
- An affidavit or declaration of facts must be submitted describing the facts which are relied on to establish that a diligent effort was made. The affidavit or declaration must be signed by a person having firsthand knowledge of the facts recited therein. A paper under rule 47(b), which is not an affidavit or declaration, was submitted.
Additionally, copies of documentary evidence such as certified mail return receipts that support a finding that the non-signing inventor could not be found or reached should be made part of the affidavit. See MPEP 409.03(d).
- Applicant must prove that, as of the date the application is deposited in the United States Patent and Trademark Office, (a) the invention has been assigned to the applicant, or (b) the inventor has agreed in writing to assign the invention to the applicant, or (c) the applicant otherwise has sufficient proprietary interest in the subject matter to justify filing of the application. See MPEP 409.03(f).

- Rule 47 applicant asserts that 1.47 status is required, and irreparable damage by way of loss of propriety rights would result if the application is not accepted at this time. Rule 47 applicant must submit proof of irreparable damage. See MPEP §409.03(g).

On Request for Reconsideration, to avoid abandonment and attain 1.47 status, applicant must correct the noted deficiencies and provide a 1.47 petition in compliance with all applicable law.

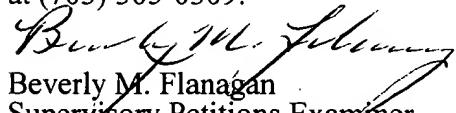
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision may be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.


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